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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No.....

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

against

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Waterman Steamship Corporation, prays that a writ of certiorari issue to review an order and judgment of the United States Court of Claims entered October 5th, 1954 granting defendant's motion to dismiss the suit for want of jurisdiction.

OPINION BELOW.

The opinion of the United States Court of Claims, printed in Appendix B hereto, *infra*, p. 14, is reported at 124 F. Supp. 622.

Jurisdiction.

The order and judgment of the United States Court of Claims sought to be reviewed was entered October 5th, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. §1255 (1).

Question Presented.[1]

Whether the Court of Claims has jurisdiction of a suit to enforce the contractual obligations of the United States to pay its share of general average, as owner of cargo carried on a privately owned and operated ocean vessel, or whether the Court of Claims has been ousted of jurisdiction in such cases by the Suits in Admiralty Act (46 U. S. C. §741 *et seq.*).

Statutes Involved.

The statutory provisions involved are the Tucker Act (28 U. S. C. §1491), the Suits in Admiralty Act (46 U. S. C. §741 *et seq.*) and the Public Vessels Act (46 U. S. C. §781 *et seq.*).

Statement.

On January 22nd, 1954, Petitioner commenced suit against the United States under the Tucker Act, 46 U. S. C. §1491, in the Court of Claims. Its petition (R. 1-14) alleged in substance as follows:

The United States and numerous merchants shipped goods on the *SS Fairisle* for carriage from New York to Bremen. The vessel was owned by petitioner and oper-

[1] The same question and related questions are presented in Petitions for Writs of Certiorari to the Court of Claims being filed in *Lykes Bros. Steamship Co.* v. *United States*, 124 F. Supp. 622, *Waterman Steamship Corporation* v. *United States*, 124 F. Supp. 634 and *United States Lines Company* v. *United States*, 124 F. Supp. 375.

ated in its regular service between North Atlantic ports of the United States and ports of continental Europe.

The contracts of carriage with the United States were evidenced as to most of the Government goods by bills of lading and as to some by a Space Contract. Under both forms of contract the United States agreed to contribute with the shipowner, as did all other cargo interests, to general average sacrifices and expenditures made and incurred for the common benefit.

While en route to Bremen on or about January 25th, 1948, the vessel accidentally stranded in the Elbe River due to causes for which the petitioner was not liable. The stranding threatened the loss of the vessel and her cargo, including the goods owned by the United States and valued at $188,189.75.

For the common benefit and to save the vessel and cargo, the petitioner made and incurred sacrifices and expenditures of a general average nature (salvage fees, tugs, temporary repairs, etc.) totaling $133,816.71. As a result, the vessel was brought off the strand and both vessel and cargo were saved and the venture was successfully completed. The Government cargo was delivered by petitioner without exercising its lien for general average contributions. In accepting it the Government impliedly agreed to pay its proportion of the general average losses. In addition after the Office of the Chief of Transportation, War Department, was informed of the general average situation, it wrote to the General Average Adjusters under date of February 5th, 1948: "If your General Average invoice for the Army assessment is found in order when it is received, it will be approved and placed in proper channels for payment." Accordingly, the United States is contractually bound to pay its rightful share of general average, not only by the express terms of the contracts of

carriage but also by its express and implied undertakings after the event.

The proportionate contribution in general average due from the United States amounts to $32,912.00 and has not been paid.

The Government moved to dismiss the suit contending that, because the cause of action was maritime in nature, the Suits in Admiralty Act vested exclusive jurisdiction in the District Courts. R. 63.

Petitioner contended that the legislative history of the Suits in Admiralty Act, its language and the weight of authority were to the effect that suit could not be brought under the Suits in Admiralty Act unless it arose out of the ownership or operation of a vessel by or for the United States.

The Court below decided that exclusive jurisdiction was in the District Courts even though the vessel involved was privately owned and operated. In so holding it expressly disagreed with the District Court, Southern District of New York, in *American President Lines, Ltd.* v. *United States,* 75 F. Supp. 110; *States Marine Corp. of Del.* v. *United States,* 120 F. Supp. 585; and *Prudential Steamship Corp.* v. *United States,* 122 F. Supp. 164. In addition it attempted to distinguish *Ryan Stevedoring Co.* v. *United States,* 175 F. 2d 490 (2nd Cir. 1949), certiorari denied, 338 U. S. 899 and ignored *The Everett Fowler,* 151 F. 2nd 662 (2d Cir. 1945), certiorari denied, 327 U. S. 804; and *C. F. Harms Co.* v. *Erie R. Co. et al.,* 167 F. 2d 562 (2d Cir. 1948).

The Court also ignored *Alcoa Steamship Company* v. *United States,* 80 F. Supp. 158 (S. D. N. Y. 1948) (reversed on other grounds, 2d Cir. 175 F. 2d 661, aff'd 338 U. S. 421), a suit under a bill of lading for freight on Government cargo carried by a private vessel in which the District Court sustained Tucker Act jurisdiction. On appeal in this Court

the Tucker Act jurisdiction of the District Court was not attacked. However, the record disclosed that it was a vigorously contested issue below and this Court in deciding the merits implicitly affirmed the holding in the District Court on the point. *Chicago* v. *Willard,* 220 U. S. 413, 419.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI.

1. By its decisions in this and other recent cases,[2] the Court of Claims virtually has abdicated its jurisdiction in the whole field of maritime contracts apparently under the belief that the Suits in Admiralty Act and the Public Vessels Act together constitute an all-inclusive grant of jurisdiction in such matters to the District Courts.

Yet, in *Calmar Steamship Corp.* v. *United States,* 345 U. S. 446, this Court admonished in a footnote: "It is not to be assumed that all claims sounding in contract can form the basis of a suit under the Public Vessels Act. * * * It is not our task, of course, to torture the Suits in Admiralty and Public Vessels Acts into an all-inclusive grant of jurisdiction to the District Courts."

2. The decision of the Court below is directly in conflict with the decisions of the Court of Appeals for the Second Circuit in *The Everett Fowler,* 151 F. 2d 662, certiorari denied, 327 U. S. 804, and *C. F. Harms Co.* v. *Erie R. Co., et al.,* 167 F. 2d 562, in which the Tucker Act was held to confer jurisdiction of suits to enforce contractual obligations of the United States, as owner of cargo, where, as here,

[2] In the instant case it was held that the Suits in Admiralty Act applied even though a vessel of the United States was not involved. In *Sinclair Refining Company* v. *United States,* 124 F. Supp. 628 (Ct. Cl. 1954) and *Waterman Steamship Corporation* v. *United States,* 124 F. Supp. 634 (Ct. Cl. 1954) the Court of Claims concluded that the Public Vessels Act was co-extensive with Suits in Admiralty Act with respect to the types of actions authorized.

they did not arise out of the ownership or operation of Government vessels. It is also in conflict with *Ryan Stevedoring Company* v. *United States,* 175 F. 2d 490 (2d Cir. 1949), certiorari denied, 338 U. S. 899, which approved *American President Lines* v. *United States,*[3] 75 F. Supp. 110 (S. D. N. Y. 1947) with which the Court below expressly disagreed and in which it was held that:

> "Many cases have been cited in the briefs of counsel but in those cases which held that a suit would not lie under the Tucker Act against the United States, in a maritime cause of action, the action arose out of the possession or operation of merchant vessels by the United States. Although the Suits in Admiralty Act refers to 'cargo owned or possessed by the United States', the court is persuaded that it was intended to refer to actions concerning cargo which arose out of the operation of merchant vessels by the United States and not to the type of action herein."

3. The importance of the question presented is clear from the fact that the United States is not only a large owner and charterer of vessels but also is one of the largest single overseas shippers and is continually contracting with numerous members of the shipping industry. Hence the current confusion as to the proper Act under which to sue the United States in given situations will continue to multiply and vex litigants until this Court clarifies the spheres of application of each Act in maritime matters.

Presently, a suit against the United States in a maritime matter will be met by a motion to dismiss no matter which

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[3] This case involved a suit against the United States on a bill of lading for freight due on Government cargo. The vessel was privately owned and operated. No valid distinction can be made between a suit for bill of lading freight and a suit for general average due by the terms of a bill of lading.

Act is invoked. Apparently there is a division of opinion or no fixed policy on the matter in the Department of Justice. Witness *Prudential Steamship Company* v. *United States,* 122 F. Supp. 164 (S. D. N. Y., 1954) where the Government succeeded in dismissing a libel in admiralty although in the same Court in *States Marine Corp.* v. *United States,* 120 F. Supp. 585 (S. D. N. Y., 1954), as in the instant case, it contended that the Suits in Admiralty Act provided the sole remedy.[4]

The suit time limitation differs under each Act. If maritime contracts with the United States can be sued on only under the Suits in Admiralty Act, they have a second class status. Suit under that Act must be brought within two years, whereas the Tucker Act permits suit on other contracts within six years. In general average cases time for suit must be counted from the termination of the venture. *United States* v. *Atlantic Mutual Insurance Company,* 298 U. S. 483. Two years is not a realistic period for suit in general average. Yet, if a litigant is to be safe, it is necessary to sue in admiralty within two years as a precaution. Often such suits are premature because the Government Agency involved has not had time to act administratively. Indeed, in complicated general average situations or where a General Average Adjustment is delayed by litigation which intervenes on questions of salvage fees or the like, completion of the General Average Statement may not be possible for three, four or five years.[5] In these situations, if Tucker Act suits are the proper remedy, the numerous

[4] Both cases cited have been appealed to the Court of Appeals, Second Circuit. Oral Argument was had December 15, 1954 and decisions are awaited.

[5] In this instance the General Average Statement was not completed until February 10, 1953, and shortly thereafter a copy was served on the Government. Although more than 20 months have now elapsed, final administrative action has not yet been taken by the Military Sea Transportation Service.

precautionary suits now being brought are unnecessarily crowding District Court calendars and causing the parties and the Government needless work and expense.

On the other hand, a litigant cannot hedge by simultaneously filing suit in the Court of Claims because that Court is without jurisdiction if another suit for the same relief is pending in another court. 28 U. S. C. §1500. Therefore, if administrative settlement becomes impossible, litigants must choose at their peril between suit in one Court or the other.

4. The decision below is believed to be erroneous and the conflicting decisions in the Second Circuit, *ante,* pp. 5 and 6, correct. As pointed out, those cases hold that the Suits in Admiralty Act gives a remedy only in cases arising out of the ownership or operation of a vessel by or for the United States. This Court has dealt with the Act only in such cases[6] and the point here raised has never been before this Court,[7] except implicitly in *Alcoa Steamship Company* v. *United States, supra.*

The language of the Act and its legislative history fully support the proposition that it applies only in such cases. Section 9 of the Shipping Act of 1916, as amended, 46 U. S. C. §808, provided that all vessels in which the United States was interested, as owner or otherwise, were subject

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[6] The principal ones are: *Blamberg Bros.* v. *United States,* 260 U. S. 452; *Eastern Transportation Co.* v. *United States,* 272 U. S. 675; *Fleet Corporation* v. *Rosenberg,* 276 U. S. 202; *Johnson* v. *Fleet Corporation,* 280 U. S. 320; *Matson Navigation Co.* v. *United States,* 284 U. S. 352, and *Calmar Steamship Corporation* v. *United States,* 345 U. S. 446.

[7] The Court of Appeals, Second Circuit, has noted with respect to the Suits in Admiralty Act: "It is perhaps strange that, although the remainder of the statute has been extensively litigated, there seems almost no litigation, and certainly no decision, dealing with the meaning of cargo in this connection. But we apprehend that it will be found as difficult as the remaining portions have already proved to be. * * *." *Ryan Stevedoring Co.* v. *United States,* 175 F. 2d 490, 492.

to the same liabilities as those of private parties. In *The Lake Monroe,* 250 U. S. 246, it was held that such vessels were subject to seizure under a libel in admiralty. The Suits in Admiralty Act was passed to relieve the inconvenience to Government vessels thus caused by the Shipping Act and an *in personam* libel was substituted for the right to proceed *in rem.*[8] Section 2 of the Suits in Admiralty Act decreed that such libel would lie where a proceeding in admiralty could be maintained between private parties "provided such vessel is employed as a merchant vessel * * *". The words "such vessel" necessarily refer to the vessels mentioned in Section 1 which are vessels owned, possessed or operated by or for the United States. This proviso shows that the proponents of the Act and Congress contemplated only *in personam* libels which arose out of the ownership or operation of such vessels. It is entirely inappropriate and indeed incomprehensible when considered in relation to a libel concerning cargo wholly unconnected with a Government owned or operated vessel.

Of late, Government counsel direct attention to *The Davis,* 10 Wall 15 (1869), and *United States* v. *Wilder,* 28 Fed. Cas. No. 16,694 (C. C., D. Mass. 1838) which held that Government cargo may be attached in the hands of a third party. They argue that the reference to "cargo" in the Act was intended to nullify these cases. However, these cases posed no problem during the half century which transpired before the Suits in Admiralty Act was passed and Government counsel fail to cite any evidence that they were given the slightest thought when the Act was under consideration by Congress.

Although the Court of Claims has accepted this unsupported argument, it is submitted that it is nothing more

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[8] S. Rept. No. 223, 66th Cong., 1st Sess.; House Committee on the Judiciary, 66th Congress, 1st Session, November 13, 1919; Cong. Rec., Vol. 59, Part 2, p. 1678; Conference Rept., No. 669, 66th Cong., 2nd Sess.

than an attempted rationalization from hindsight. The fact that, after an accident or disaster to a Government vessel, cargo carried thereon may be salvaged along with the vessel and that either or both may be subject to attachment in the hands of salvors for salvage fees is adequate explanation for the reference to "cargo" in the Act. Indeed, the Act in the form in which it was passed by Congress shows that salvage suits were considered for it was entitled: "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels * * *." Appendix B.

However desirable it may be that all maritime suits against the Government lie in admiralty (and this must be doubted in view of the brevity of suit time and for other reasons), the Act should not be interpreted to encompass situations not clearly within its terms nor its original intendment. Particularly to be avoided is any interpretation, not clearly required, which creates conflicts with other statutes (Tucker Act) or impairs the well settled jurisdiction of other Courts.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: New York, December 28th, 1954.

Respectfully submitted,

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APPENDIX A.

PERTINENT STATUTORY PROVISIONS.

TUCKER ACT.

28 U. S. C. §1491. CLAIMS AGAINST UNITED STATES GENERALLY.

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort.

* * * * * *

28 U. S. C. §1500. PENDENCY OF CLAIMS IN OTHER COURTS.

The Court of Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

* * * * * *

28 U. S. C. §2401. TIME FOR COMMENCING ACTION AGAINST UNITED STATES.

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at

the time the claim accrues may be commenced within three years after the disability ceases.

* * * * * * *

SUITS IN ADMIRALTY ACT.

(Act of March 9, 1920, 41 Stat. 525, Secs. 1 and 2 [46 USC, §§741 and 742])

An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock, or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel *in personam,* be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

Sec. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. * * *.

Public Vessels Act.

(46 U. S. C. §781 *et seq.*)

46 U. S. C. §781. Libel in Admiralty Against or Impleader of United States.

A libel *in personam* in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April, 1920.

APPENDIX B.

OPINION BELOW.

(This joint opinion was rendered in this case and in the case of *Lykes Bros. Steamship Company* v. *United States,* 124 F. Supp. 622.)

LITTLETON, *Judge,* delivered the opinion of the court:

These cases come before the court on defendant's motions to dismiss plaintiffs' petitions. The question presented is whether a suit for general average contribution by Government cargo is maintainable under the Tucker Act, 28 U. S. C. 1491, upon which plaintiffs have based their actions, or whether their alleged causes of action are cognizable under the Suits in Admiralty Act, 46 U. S. C. 741 *et seq.,* which vests jurisdiction in the federal district courts. Sections 1 and 2 of that Act read in part as follows:

> [Sec. 1] No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel *in personam,* be subject to arrest or seizure by judicial process in the United States or its possessions: * * * [41 Stat. 525, 46 U. S. C. 741.]
>
> [Sec. 2] In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel *in personam* may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel * * *. Such suits shall be brought in the district court of the United States for

> the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. * * * [41 Stat. 525, 46 U. S. C. 742.]

The vessels in question, owned by plaintiffs,[1] were operated by them for their own use in commercial shipping and carried, among other things, Government-owned cargoes under bills of lading and space charters. While transporting said cargo the ships became stranded, with both vessels and cargoes being saved at plaintiffs' expense. Plaintiffs have brought these actions to recover from defendant as part owner of the cargoes a general average contribution toward the rescue expenditures. Defendant has moved to dismiss on the grounds that plaintiffs' remedy, if any, is a suit in the district court under the Suits in Admiralty Act.

Plaintiffs' contention is that a suit with respect to Government-owned cargo is not authorized under the above Act unless such cargo is carried on vessels owned or operated by or for the United States. Plaintiffs point out that here while Government cargo is involved the ships were privately owned and were not operated by or for the United States. In short, plaintiffs argue that Congress in referring to cargo in the Act had reference to only Government cargo on vessels which fell within the terms of the Act.

Defendant asserts that the plain language of the Act shows no such intention. Defendant contends that the Act provided, *inter alia,* for three distinct objectives which are pertinent here: (1) It gave immunity from seizure to Government-owned vessels or vessels operated by or for it employed in the merchant service, (2) excepted from seizure Government cargo and (3) substituted for the in rem proceeding which could be had in admiralty courts if private parties were involved a proceeding in personam

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[1] In No. 488—53, Lykes Bros. Steamship Co., Inc. operated the SS. *Benjamin Huntington* as bareboat charterer and as owner *pro hac vice.*

In No. 31—54, Waterman Steamship Corporation operated the SS. *Fairisle* as owner.

against the United States whenever (1) or (2) was found to exist.

The enactment of the Suits in Admiralty Act shortly after the close of the First World War stemmed from a desire on the part of Congress to prevent interference with the Government's traffic in the commercial shipping trade which traffic had become quite extensive during the war period. Under the Shipping Act of 1916, 39 Stat. 728, the Supreme Court held that Government vessels or those operated for it were subject to arrest and seizure in admiralty proceedings. *The Lake Monroe,* 250 U. S. 246. For many years Government-owned cargo on private vessels had been subject to in rem actions in the admiralty courts. *The Davis,* 10 Wall. 15.

Therefore, Congress in a move to free Government shipping from these restrictions passed the Suits in Admiralty Act which removed the restrictions and at the same time via a suit in personam provided a remedy for those seeking redress against the Government arising from the operation of Government ships or the transportation of Government cargo. The remedy under that Act is exclusive. *Johnson* v. *U. S. Shipping Bd. Emergency Fleet Corp.,* 280 U. S. 320.

The language of the Act supports defendant's position. Section 741 speaks of "No vessel owned by the United States * * * or in possession of the United States * * * or operated by or for the United States * * *, *and no cargo owned or possessed by the United States* * * *, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure * * *." [Italics supplied.] Section 742 provides for the libel in personam vesting jurisdiction in the district court. Nothing in the language suggests the construction urged by plaintiffs. Both the language in the Act as well as that of the original bill as passed by the Senate and the amendment to Section 1 (Sec. 741) offered in the House treat the terms "vessel" and "cargo" in the disjunctive.[2] This language, when read

[2] Senate Bill 3076, 66th Cong., 1st Sess. and House Amendments, 66th Cong., 2d Sess. appear in 59 Cong. Rec. 1678.

in light of the purposes behind the Act, the fact that general average contribution is a maritime cause of action and that the district courts are the accustomed forum for admiralty matters, supports the view we take here. *Calmar S. S. Corp.* v. *United States,* 345 U. S. 446; *M & J Tracy, Inc.* v. *United States,* 125 C. Cls. 70, cert. den. 346 U. S. 854; *Field* v. *United States,* 125 C. Cls. 559, cert. den. 346 U. S. 922.

In so holding we respectfully disagree with results reached by the District Court of the Second Circuit in *American President Lines, Ltd* v. *United States,* 75 F. Supp. 110; *States Marine Corp. of Del.* v. *United States,* 120 F. Supp. 585; and *Prudential Steamship Corp.* v. *United States,* 122 F. Supp. 164. Our holding, however, is in accord with that of the District Court of California in *Pacific Far East Lines Inc.* v. *United States,* 1952, A. M. C. 815 (N. D. Cal.). The decision in *Ryan Stevedoring Co.* v. *United States,* 175 F. 2d 490, cert. den. 338 U. S. 899, relied upon by the plaintiffs here and by the court in the *States Marine* and *Prudential* cases, we find to be inapplicable.[3]

Defendant's motions to dismiss are granted and plaintiffs' petitions are dismissed. It is so ordered.

LARAMORE, *Judge;* MADDEN, *Judge;* WHITAKER, *Judge;* and JONES, *Chief Judge,* concur.

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[3] The facts of that case are briefly these: A truck being operated on a Hoboken pier by the Ryan Stevedoring Co. collided with metal drums containing highly explosive and inflammable material belonging to the Government and about to be loaded on a Government vessel. A fire resulted causing damage to a nearby vessel. The owner of that vessel filed a libel against the Ryan Co., and the latter sought to implead the United States alleging that the Government was negligent in the care of its drums which negligence caused the fire. Jurisdiction in the district court was sought under the Suits in Admiralty Act. The court held the Act inapplicable stating that the liability referred to in the Act arising from Government ownership of cargo must be one "directly connected with the Government's ownership and operation of a vessel." That decision was affirmed on appeal, 175 F. 2d 490, wherein the circuit court also stated: "And the drums on the pier, even if about to be loaded upon a vessel, cannot be considered cargo in any real sense having to do with navigation of government vessels. Here there seems no reason why the standard test of admiralty—location—should not be given its natural effect."